RESPONSE REQUESTED

ORIGINAL

No. 87-6422

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

- -

ROBERT LEE LEWIS,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

- -

RESPONSE TO PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF FLORIDA

RESPONSE IN OPPOSITION
TO WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether pursuant to Rhode Island v. Innis, infra, and Arizona v. Mauro, infra, revealing evidence to a suspect which is available against that suspect amounts to an interrogation?

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CITATION TO THE OPINION BELOW

The Respondent accepts the Petitioner's statement.

JURISDICTION

The Respondent accepts the Petitioner's initial statement, but rejects its final statement as conclusory.

CONSTITUTIONAL PROVISIONS INVOLVED

The Respondent accepts the Petitioner's statement.

STATEMENT OF THE CASE

Respondent accepts Petitioner's Statement of the Case to the extent that it is a non-argumentative recitation of the facts and would make the following additons and/or clarifications:

Officer Curcio took Petitioner to an evidence room where he played a video tape depicting the robbery and the shooting of the victim. Officer Curcio at no time questioned the Petitioner, nor did he make any comments with regard to the video while Petitioner viewed it.

Petitioner viewed the video tape beside the police officer. He did not appear distressed, he was not badgered by questions or coercive comments in fact as the Florida Fourth District Court of Appeal noted he treated the situation rather haphazardly and with some levity. Additonally, the Court noted that Petitioner was well aware of his rights and the procedures involved as he had been arrested on felony charges many times previously. Here the court concluded that the circumstances of the case ie. Petitioner's knowledge of his rights and his obvious lack of fear and pressure supported the conclusion that from the Petitioner's perspective viewing the video did not "impinge upon his will in a coercive manner". 509 So.2d at 1237.

REASONS FOR DENYING THE WRIT

Petitioner seeks to invoke this Court's discretionary jurisdiction to determine whether presenting evidence available against a suspect is an interrogation within the meaning of Rhode Island v. Innis, 446 U.S 291 (1980). Petitioner attempts to depict the decision of the Florida Fourth District Court of Appeal as a novel aproach which misapplies the holdings of Rhode Island v. Innis, supra, and Arizona v. Mauro, ___U.S.___, 107 S.Ct. 1931 (1987). Respondent submits that the Fourth District's application of these two decisions was correct and that the thorough, well-documented decision must stand.

In Rhode Island v. Innis, supra, this Honorable court was confronted with a factual scenario in which a custodial murder suspect, who had been given his Miranda v. Arizona, 384 U.S. 436 (1966) warnings and invoked his rights to counsel and silence in response thereto, incriminated himself by volunteering the location of the murder weapon after overhearing two police officers discuss the possibility that the shotgun would be found and discharged by schoolchildren. The Court held the defendant's inculpatory statement admissible, enunciating the legal principle that the officers' conversation did not constitute the "functional equivalent" of prohibited interrogation because they should not have been expected to know that their actions "were reasonably likely to elicit an incriminating response" from the particular suspect. Id., 446 U.S. 291, 301.

In Arizona v. Mauro, supra, this Court revisited Rhode Island v. Innis, focusing on the importance of the suspects perception. The Court held that a suspect's statement made after Miranda warnings were given and not a product of psychological pressure, compelling influences or direct questioning was not a result of interrogation or the functional equivalent and were admissible at trial. The Court employed a "totality of the circumstances approach" in reviewing the suspect's perception of the police procedure in question and relied on such factors as the suspect's understanding of the situation and whether the police questioned the suspect immediately prior to his statements.

In the instant case the Fourth District applied both of the holdings in Rhode Island v. Innis and Arizona v. Mauro. The Court paid particular attention to the circumstances of the case as espoused in the Arizona v. Mauro decision. The court stated that Petitioner had been given Miranda warnings and chose to remain silent. He was then shown a video tape of the robbery in the presence of a police officer and was "not subject to any express questioning". Further, Petitioner had an understanding of police procedure as he had been subject to many prior arrests. His demeanor while viewing the tape was one of

lightheartedness and levity and was contrary to his contention that he was subjected to an "interrogation environment". Again, the Court relied on Arizona v. Mauro which re-emphasized the importance of viewing the circumstances from the suspect's perspective. The Fourth District thus reviewed the facts, Petitioner's knowledge experience, and demeanor. The court, relying on the particular circumstances of the case, correctly determined that from Petitioner's perspective the police action involved did not rise to a level of interrogation, and his statement was a spontaneous and voluntary assertion which was correctly held admissible at trial.

Petitioner however wishes to dramatize the factual scenario in order to portray a scene which necessarily suggests an atmosphere of psychological pressure. Respondent asserts that no such psychological pressure or coercive questioning took place. In fact when the circumstances are evaluated without the drama the facts reveal that no questions were asked nor comments were made to Petitioner while he viewed the tape. Petitioner was under no great compulsion to speak, his statements were merely spontaneous and voluntary and not a product of psychological pressure or coercive questioning.

After a review of federal case law it appears that several courts have addressed the same issue as involved here, that is, whether revealing evidence available against a suspect to the suspect after he has invoked his right to remain silent cons itutes compulsion. In U.S. v. Davis, 527 F.2d 1110 (9th Cir. 1975) a defendant's confession was held admissible although made immediately after he indicated his wish to remain silent and made after F.B.I. agents asked defendant if he wished to reconsider his position, showing him a bank surveillance photo of himself participating in the robbery. See also U.S. v. Rodriquez-Gastellum, 569 F.2d 482 (9th Cir. 1978); U.S. v. Pheaster, 544 F.2d 353 (9th Cir. 1976) cert denied 429 U.S. 1099 (1977); U.S. v. Hodge 487 F.2d 945 (5th Cir. 1973). Additionally in Jenkins v. Bara, 663 F.Supp. 891 (E.D.N.Y. 1987), it was held

that a police officer's conduct in defendant's presence, of turning up the volume of a police radio broadcast and remarking about the broadcast which involved the defendant did not amount to an interrogation. Accordingly, federal courts have addressed this issue with similar facts as involved in the instant case and have upheld such police procedure under similar constitutional attacks.

Petitioner relies on several decisions of state courts to support his position that this type of police procedure is always coercive and always amounts to interrogation therefore rendering any statements or confessions inadmissible at trial. These decisions are certainly not binding on this Court. Additionally, the two federal decisions which Petitioner relies on were decided prior to the guidance of this Court's decisions in Rhode Island v. Innis and Arizona v. Mauro. Further, the Ninth Circuit in U.S. v. Barnes, 432 F.2d 89 (9th Cir. 1970) a case relied on by Petitioner, has since held contrary to Barnes in such cases are U.S. v. Rodriquez-Gastelum, supra, U.S. v. Davis, supra, and U.S. v. Pheaster, supra. Accordingly, pursuant to the dictates of Rhode Island v. Innis and Arizona v. Mauro the federal courts have decided that simply revealing evidence to the suspect, alone does not per se amount to interrogation.

In sum this Court has answered the issue presented here numerous times. The trial court and the Florida Fourth District Court of Appeal has decided this case in a manner consistent with this Court's prior decisions. No conflict among the decisions exists. Accordingly, this Court should not exercise its jurisdiciton.

CONCLUSION

WEHEREFORE, based on the foregoing reasons and authorities, the State of Florida, Respondent, respectfully requests that the Petitioner's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Petition for Writ of Certiorari to the District Court of Appeal, Fourth District of Florida has been furnished by courier to: MARGARET GOOD, ESQUIRE, Assistant Public Defender, The Governmental Center, 301 N. Olive Avenue, 9th Floor, West Palm Beach, Florida 33401 this 21st day of April, 1988.

Respectfully submitted,

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